

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

EDGARDO C. RUBIO,

No. C 13-05752 LB

Plaintiff,

ORDER RE: MOTION TO DISMISS
AND AMENDED COMPLAINT

v.

U.S. BANK N.A., AS TRUSTEE FOR THE
NOTEHOLDERS OF AEGIS ASSET
BACKED SECURITIES TRUST 2005-3;
OCWEN LOAN SERVICING LLC;
WESTERN PROGRESSIVE, LLC; and
DOES 1 - 100, Inclusive.

Defendants.

Defendants removed this action from San Francisco County Superior Court on December 12, 2013. *See* Notice of Removal, ECF No. 1.¹ On December 19, 2013, Defendants filed a motion to dismiss Plaintiff Edgardo Rubio's claims. *See* Motion to Dismiss, ECF No. 7. Defendants noticed their motion for a February 6, 2014 hearing and under the local rules, Rubio's opposition brief was due on January 2, 2014. *See* Docket. Rubio did not file an opposition brief. Instead, on January 2, 2014, Rubio filed a "Notice of Intent to File an Amended Complaint," in which he states that he will file an amended complaint "no later than February 5, 2014" in advance of the February 6, 2014 hearing. *See* ECF No. 12.

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page number at the top of the page.

1 Federal Rule of Civil Procedure 15(a)(1)(B) permits a party to amend a complaint once as a
2 matter of course within “21 days after service of a motion under Rule 12(b).” Otherwise, “a party
3 may amend its pleading only with the opposing party’s written consent or the court’s leave. The
4 court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

5 Here, Defendants filed their Rule 12(b) motion on December 19, 2013. Thus, the deadline for
6 Rubio to file an amended complaint as of right is January 9 – not February 5.

7 In the interest of judicial efficiency and in light of the lenient federal standard for permitting
8 amended complaints early in the litigation, the court directs the parties to meet and confer by the
9 close of business on January 6, 2014, to determine whether they can stipulate to allow Rubio to file
10 an amended complaint after the January 9 deadline. By January 9, 2014, Rubio should file either:
11 (1) an amended complaint, (2) a stipulation extending the deadline for him to file his amended
12 complaint, (3) a notice of his intent to file a motion for leave to file an amended complaint and a
13 proposed timeline for that motion, or (4) a status update informing the court about his opposition to
14 Defendants’ motion. The parties also may set the matter for a telephonic case management
15 conference on January 16, 2014 via Court Call by contacting courtroom deputy Lashanda Scott at
16 (415) 522-3140.

17 **IT IS SO ORDERED.**

18 Dated: January 3, 2014



19 LAUREL BEELER
20 United States Magistrate Judge
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